

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 MICHAEL VASILIIY KOLESNIK,

11 Petitioner,

12 v.

13 PATRICK GLEBE,

Respondent.

No. C11-5694 BHS/KLS

ORDER DENYING MOTION FOR THE  
APPOINTMENT OF COUNSEL

14 This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge  
15 Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has  
16 filed a motion for the appointment of counsel. ECF No. 6. Petitioner requests that counsel be  
17 appointed to assist him in developing the facts in support of his petition. In particular, Petitioner  
18 maintains that to fully develop his claim that his trial counsel was ineffective, he needs a  
19 psychiatric or psychological evaluation of his mental condition at the time of the crime. ECF  
20 No. 6, p. 2.

21  
22 There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254  
23 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See  
24 *Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164,  
25 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United  
26 States District Courts. In addition, if a claim has been adjudicated on the merits by a state court,

ORDER DENYING MOTION FOR COUNSEL - 1

1 a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was  
2 before the state court.” *Cullen v. Pinholster*, --- U.S. ---, 131 S.Ct. 1388, 1399 (2011).

3 Therefore, Petitioner’s request for federal habeas relief on his ineffective assistance of counsel  
4 claim must be determined solely on the basis of the record that was before the state court.

5 In addition, an evidentiary hearing has not been granted in this case and the claims in the  
6 petition are adequately set forth and articulated. The court has not yet determined that an  
7 evidentiary hearing is necessary. Therefore, Petitioner’s request for counsel shall be denied at  
8 this time.  
9

10 Accordingly, it is **ORDERED**:

- 11 (1) Petitioner’s motion for counsel (ECF No. 6) is **DENIED**.  
12 (2) The Clerk is directed to send copies of this Order to Petitioner.  
13

14 DATED this 19th day of September, 2011.

15  
16   
17 Karen L. Strombom  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25  
26